No. 94-1584

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

NANNY CAY ENTERPRISES, LTD., (PREVIOUSLY C.D. HUNTER ASSOCIATES), CARIBBEAN MARINE CENTER, LTD. and their subsidiary NANNY CAY, LTD., B.V.I. PROPERTY MANAGEMENT, NORBERT LORCK-SCHIERNING and KLAUS WAECHTER,

Petitioners,

v.

BARCLAYS BANK PLC,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITIONERS' REPLY BRIEF

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April 24, 1995

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REPLY ARGUMENT

The statement of the case as presented by the respondent clearly demonstrates why this Court needs to intervene in this case. As noted in the statement of the case, protracted litigation is taking place in the U.S. District Court of the Virgin Islands regarding the loan transactions in question. This litigation has been fragmented by the District Court's determination that some of the litigation is convenient before the Court in St. Thomas while it would be more convenient for other aspects of the case to be *dismissed* in favor of a foreign jurisdiction. However, the Court never held that it was "inconvenient" for Barclays to litigate all of these issues in the Virgin Islands.

Quite significantly, Barclays' Brief in Opposition does not argue that it would be inconvenient to litigate these claims in the U.S. Virgin Islands. Moreover, contrary to Barclays' suggestion that the transactions in Tortola are separate from those in St. Thomas, it is clear that the only reason Barclays loaned additional funds in St. Thomas was to further secure the Tortola loan. Indeed, Barclays admits it has filed its own suit against the Waechters in the U.S. Virgin Islands regarding the same loan transaction, which is inextricably connected between the U.S. and British Virgin Islands. Barclays' admission that it is now trying to dismiss the suit it filed in St. Thomas confirms that Barclays is merely "forum shopping" and that St. Thomas is not really an inconvenient forum in which to litigate these issues.

Such piecemeal litigation in a complicated commercial transaction is a misuse of the doctrine of *forum non conveniens* as enunciated by this Court. In order to clarify

district courts in the future as to the application of the *forum non conveniens* doctrine, it is essential for this Court to intervene in this matter by granting certiorari under either rule 10.1(a) or 10.1(c) in clarifying how the doctrine is to be utilized in such transactions which take place in more than one jurisdiction. This question is even more important when the other jurisdiction is not one within the boundaries of the United States, as is the case here. Indeed, it is unlikely that the British Courts will even permit the case to be heard because of the passage of time that has occurred, rendering this preliminary procedural decision a dispositive one.

Respectfully submitted,

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